



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

May 27, 2016

VIA EMAIL AND REGULAR MAIL

[See List of Addressees Attached]

RE: Settlement Agreement and Order on Consent for Remedial Design,
New Cassel/Hicksville Groundwater Contamination Superfund Site, OU1

Dear Sir/Madam:

I am writing in response to comments submitted by some of you on the Environmental Protection Agency's ("EPA's") March 23, 2016 draft Settlement Agreement and Order on Consent for Remedial Design ("Agreement"), associated Statement of Work ("SOW"), and Preliminary Design Investigation Work Plan ("PDIWP"), regarding Operable Unit One ("OU1") of the New Cassel/Hicksville Groundwater Contamination Site ("Site"). As you know we had requested that you provide us with a joint response from all three Respondent groups identified in the Agreement. EPA was disappointed that such a combined response could not be achieved despite the over five week turnaround time and despite the years the parties have had to organize themselves into a cohesive group. Although we did not receive a unified response, we nonetheless reviewed the individual responses. Below is a discussion of some of the broader issues which must be resolved before we can continue to negotiate. Also discussed are certain technical comments for which we believe there has either been a misunderstanding or where there is room for compromise. The discussion below is not exhaustive. EPA reserves its rights to raise additional issues as we proceed with negotiations, including, but not limited to, comments regarding the plume definitions, submission and approval of deliverables, availability of dispute resolution, and access.

In their comments, the Group B and Group C Respondent Groups deleted whole sections of the Agreement relating to the provision of financial assurance and insurance, and the payment of future response costs and stipulated penalties. EPA will not sign an agreement that does not include these provisions. Although EPA is willing to discuss certain specifics of these provisions, such as the amount of stipulated penalties, if the parties are unwilling to provide financial assurance and insurance, or pay future response costs and stipulated penalties if such penalties are assessed in accordance with the Agreement, then there is no further reason to continue discussions.

The parties also expressed concerns about the possibility of EPA entering into separate settlements with certain parties. Despite repeated requests, EPA has neither engaged in, nor indicated that it will engage in, negotiations towards separate agreements of any kind, including work agreements, *de minimis* agreements, or ability-to-pay agreements. If parties choose to send financial or other documentation to EPA, EPA will receive and review it but we are now reiterating to all parties that we are not engaging in separate settlement negotiations. EPA is also

seeking to have all parties sign the tolling agreement. If EPA is unable to reach a settlement on the Agreement, EPA will consider its enforcement options, including whether to issue a unilateral administrative order ("UAO") pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring performance of work at the Site. If only a subset of parties settle with EPA, EPA will consider issuing a UAO to the non-settling parties to cooperate and coordinate with the performing parties on the work called for in such an Agreement.

Certain parties have also requested that EPA include additional parties not mentioned in EPA's March 23, 2016 settlement offer. With respect to 2632 Realty Development Corp., it is EPA's understanding that it was not the owner of 299 Main Street in the New Cassel Industrial Area at the time of disposal nor is it the current owner, although it was the owner when New York State started its action. EPA will consider sending a supplemental information request to obtain additional information as to whether this party is otherwise liable under Section 107(a) of CERCLA, 42 U.S.C. §9607(a). With respect to William Gross and C&O Realty, EPA is looking into the evidence it has with respect to these parties and will include them in these settlement talks if it appears they are liable. There are also other parties that were named in EPA's settlement offer who have not responded or participated in any way. I am attempting to reach out to these parties with minimal success and would encourage you to do the same. Please note, that EPA will not delay these negotiations as we clarify the liability of other parties. If additional parties are named after OU1 RD work has begun, EPA would seek to include them in the work or require payment toward such work.

With respect to the so-called Upgradient Parties - the Verizon entities, Vishay, and Sulzer Metco - EPA does not, at this time, believe that the data obtained to date, indicates that the OU1 plumes have been impacted by the plumes from these properties. If additional information is received which convinces us otherwise, we would, at that time either include them in the OU1 work or require payment toward such work.

In light of comments received on the SOW and the PDIWP, EPA will consider revising the submission timeframes included in Table 1 of the SOW. EPA will also consider revising the PDIWP to allow for evaluation of direct discharge to a publically owned treatment work including pre-treatment requirements under PDI Directive 3 – Groundwater Extraction Well Install and/or Aquifer Extraction System Effluent Evaluation, which was requested by the Frost Street Parties.

Please note that comments submitted by Respondent Group C parties regarding the Site Conceptual Model have been addressed in the Responsiveness Summary to the OU1 ROD and EPA will not reiterate those responses here. However, if parties wish to collect additional data beyond what is called for in the SOW and PDIWP, EPA will consider adding language that will allow for a Respondent, should they identify a need, to collect additional data for remedial design purposes, in accordance with data collection requirements set forth in the Agreement and SOW.

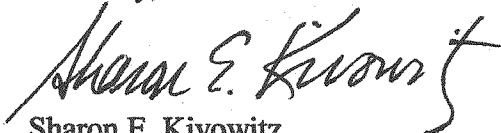
Certain parties have concerns about the specifics of the vertical profiling to be performed under the PDIWP. Please refer to Table 3 of the PDIWP for the rationale as to why particular vertical profile and monitoring well locations were selected. EPA strongly encourages that consideration be given to installation in the right-of-way to avoid concerns cited in the Respondent's comments, particularly related to access.

Finally, EPA would like to clarify that submission of the PDI Recommendations Report which would occur after the completion of PDI Directives 1 and 2, is the vehicle to be used by Respondents to provide recommendations for the structuring and implementation of the remaining PDI Directives 3, 4, and/or 5.

Based on the discussion above, if you are interested in continuing our negotiations, please respond to me by no later than June 10, 2016. If we are unable to achieve a settlement within a reasonable timeframe, we will consider our other enforcement options. I am still hopeful that we can reach agreement and I urge you to work together, with the assistance of David Batson, to figure out how to accomplish this.

I look forward to hearing from you soon.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sharon E. Kivowitz", with a stylized flourish at the end.

Sharon E. Kivowitz
Assistant Regional Counsel

cc: David Batson

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